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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Cuba

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Cuba prepared by Mr. Carl-Johan Groth, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 12 of Commission resolution 1996/69 of 25 April 1996 and Economic and Social Council decision 1996/275 of 23 July 1996.

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Annex

Interim report on the situation of human rights in Cuba prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1996/69 and Economic and Social Council decision 1996/275

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I. INTRODUCTION

1. At its fifty-second session, the Commission on Human Rights adopted resolution 1996/69, entitled "Human rights in Cuba", on 23 April 1996, in which the Commission decided to extend the mandate of the Special Rapporteur for another year. This resolution was approved by the Economic and Social Council in its decision 1996/275 of 23 July 1996.

2. In resolution 1996/69, the Commission requested the Special Rapporteur to report to the Commission at its fifty-third session and to submit an interim report to the General Assembly at its fifty-first session. The present report is in response to that request.

3. In the same resolution, the Commission regretted profoundly the numerous reports of violations of human rights and fundamental freedoms described in the previous report of the Special Rapporteur, and expressed particular concern at the prevailing intolerance for freedom of speech and assembly in Cuba.

4. The Commission noted with deep regret the continued failure of the Government of Cuba to cooperate with the Special Rapporteur and its refusal to permit him to visit Cuba in order to fulfil his mandate. At the same time, it called upon the Government of Cuba to give the Special Rapporteur the opportunity to carry out his mandate in full, in particular by allowing him to visit Cuba, and requested the Special Rapporteur to maintain direct contacts with the Government and citizens of Cuba. Pursuant to that request, the Special Rapporteur once again requested the cooperation of the Government in order to fulfil his mandate, asking, inter alia, for the opportunity to visit Cuba. That request has remained unanswered.

5. With regard to the maintenance of contacts with Cuban citizens, the Special Rapporteur has endeavoured to expand such contacts as widely as possible and has continued to demonstrate his willingness to receive any person or group wishing to meet with him.

6. For that purpose he travelled to New York and Washington, D.C., on 26 and 29 August 1996, where he had the opportunity to meet with experts on the real situation in Cuba in various professional circles, including the academic world; with people who had recently left the country and had suffered violations of human rights, together with representatives of the following organizations and groups: the Cuban Committee for Human Rights, the Committee to Support the Human Rights Movement in Cuba, the Cuban Workers' Trade Union, Human Rights Watch, the American Institute for Free Labor Development, the Christian Democratic Party of Cuba, the 30th of November Movement, the Cuban Centre for Human Rights, Cuban Municipalities in Exile, the Committee to Protect Journalists, the Corriente Agramontista, and the Concilio Cubano Support Group. The Special Rapporteur received written material, in addition to that received from the above-mentioned sources, from such sources as the Information Bureau of the Cuban Human Rights Movement, the World Federation of Cuban Political Prisoners and Amnesty International, as well as many communications from individuals sent from Cuba and abroad.

II. NEW COMPLAINTS CONCERNING THE RIGHT TO NON-DISCRIMINATION ON POLITICAL GROUNDS AND FREEDOM OF EXPRESSION AND ASSOCIATION

7. The Special Rapporteur continued to receive information about instances of persons who had been imprisoned and harassed and subjected to house searches, threats, temporary arrest, loss of employment or other kinds of reprisal connected with exercise of the freedom of expression and association or due to discrimination on political grounds. During 1996 the pattern described in earlier reports 1/ changed only slightly and remained virtually the same as before, as can be seen from a number of significant incidents and cases described below.

8. In his earlier report the Special Rapporteur noted that in October 1995 some 100 groups - mainly political, trade-union, civil or religious and not officially recognized - had formed the coalition known as Concilio Cubano. The coalition's basic aims are: general amnesty for political prisoners; total respect for the laws in force; fulfilment by the Government of its international human rights commitments; adoption by the Government of the measures required to establish a system of free employment and free enterprise; and free and direct elections. Since the formation of the coalition its leaders and many of its members have been subjected to threats, including threats of imprisonment, and to temporary arrest, interrogation and other acts of harassment in various parts of the country, and have been prevented from holding a number of meetings. 2/ For many of them, however, this treatment was nothing different from what they had already experienced in their respective groups.

9. In December 1995 Concilio Cubano requested permission from the authorities to hold a national meeting on 24 February 1996. As that date approached, it became clear that the meeting would not be authorized, and indeed it was not. An official of the Ministry of the Interior appeared at the home of Gustavo Arcos, leader of the coalition, and told him that the authorities had no intention of allowing the meeting. During the second half of February dozens of members of the coalition were arrested throughout the country, and the arrests continued despite the decision of its leaders to cancel the meeting in order to avoid trouble. Those arrested in Havana included: José Miguel Acosta Meyer of the Asociación Pro Arte Libre; Irene Almira of the Agenda Nacionalista movement; Pedro Pablo Alvarez, deputy delegate of Concilio Cubano; Horacio Casanova Carrera, member of the executive committee of the Partido Pro Derechos Humanos en Cuba; Reinaldo Cosano Alén, deputy delegate of Concilio Cubano; Griselda Fernández Sánchez of the Alianza Democrática Popular; Alexander Fuentes Lara of Agenda Nacionalista; Miriam García of the Alianza Democrática Popular; José García Reyes of the Movimiento Ignacio Agramonte; René Gómez Manzano of Corriente Agramontista; Nerys Gorostiza Campoalegre of the Madres Cubanas por la Solidaridad movement; Miguel Granda Oliver of Agenda Nacionalista; Pedro Labrador Gilimas of the National Council for Civil Rights; Eriberto Leyva, President of the Alternative Studies Institute; Gladys Linares Blanco, President of the Frente Femenino Humanitario; Librado Linares, representative of the Las Villas committee of Concilio Cubano; Ricardo Mena Portal, delegate of the Alianza Democrática Popular in Ciego de Ávila; Héctor Palacio Ruiz, deputy delegate of Concilio Cubano; Mercedes Parada Antunez, leader of the Alianza Democrática Popular;

Alberto Perera Martínez, President of the Peace, Progress and Freedom Committee; José Luis Quiroz Gómez, of Bloque Democrático José Martí; Mercedes Rineri Carrión of the Martí Youth Organization; Gema Romero Iparraguirre, Vice-President of the Cuban Democratic Coalition; Marta Beatriz Roque, Director of the Cuban Institute of Independent Economists; Néstor Rodríguez Lovaina, President of the Young Cubans for Democracy movement; Mercedes Sabourni of Agenda Nacionalista; Lázaro Santana of the Movimiento Maceista por la Dignidad; Agustín Sosa Moya, President of the Humanitarian Commission of the Presidio Político; Orestes Torres Céspedes of the Alianza Democrática Popular; and Jesús Zúñiga, spokesman of the Democratic Solidarity Party. José Angel Chente Herrera and Juan José Pérez Maso, of the Frente Pro Derechos Humanos, and Máximo Gómez were arrested in Pinar del Río province.

10. Although all these persons were released hours or days after their arrest, charges were brought against some of them and at least four were tried and sentenced to imprisonment. Their cases are the following:

(a) Lázaro González Valdés, deputy delegate and member of the Concilio Cubano national secretariat, was arrested on 15 February 1996 and taken to the 100 y Aldabó Technical Department of Investigations detention centre. Following a trial on 22 February in the Municipal Court of La Palma, Arroyo Naranjo, Havana, he was sentenced to 14 months' imprisonment on charges of resisting an officer and contempt of the authorities. The first charge was based on the allegation that members of his family had been slow to open the door when the police came to his home to arrest him, and the second on the allegation that he had not ceased to be active in Concilio Cubano despite having received several warnings from the authorities. The provincial court upheld the sentence of 14 months' imprisonment. He was incarcerated in prison 1580, known as "El Pitirre";

(b) Leonel Morejón Almagro, a 31-year-old lawyer, member of Corriente Agramontista, national delegate and one of the founders of Concilio Cubano, was arrested in Havana on 15 February 1996 and taken to the Technical Department of Investigations. The Municipal Court of La Palma sentenced him in the first instance to six months' imprisonment for resisting an officer in the exercise of his duties, 3/ apparently because he asked the officers who were about to arrest him to identify themselves and show him the corresponding warrant. On 8 March 1996 the People's Provincial Court sentenced him to 15 months' imprisonment, adding the charge of contempt 4/ to the first charge after the public prosecutor had appealed the sentence imposed in the first instance. He was initially taken to serve his sentence at the Valle Grande prison in Havana. However, in July he was transferred to the Ariza prison in Cienfuegos. In November 1995 Leonel Morejón Almagro and his wife were arrested in Villa Marista and interrogated for several hours. In January 1996 he was again detained for some hours together with other members of one of the bodies that make up Concilio Cubano;

(c) Roberto López Montañez, aged 43, a member of the Movimiento Opositor Panchito Gómez Toro and the Alianza Democrática Popular, both organizations members of Concilio Cubano, was arrested on 23 February 1996 and sentenced on 4 July 1996 by the Municipal Court of Boyeros to fifteen months' imprisonment for the crime of contempt of Commander-in-Chief Fidel Castro and falsification

of documents. López Montañez, who is in very poor health, was taken to the Valle Grande prison;

(d) Juan Francisco Monzón Oviedo, aged 44, a teacher and member of the National Coordination Council of Concilio Cubano, was arrested on 15 February 1996 and sentenced to six months' imprisonment for "unlawful association" following a summary trial on 21 March. He was taken to the Guanajay prison in Havana province.

In the first two cases the accused's lawyer was unable to see the details of the charges against them until an hour or two before the hearings, and he was not allowed to speak with his clients until a few minutes before the hearings.

11. The Special Rapporteur also received information about persons whose trials are pending and whom the State Security Department had pressured to leave the country, under threat of prison sentences:

(a) Eugenio Rodríguez Chaple, President of Bloque Democrático José Martí, an organization belonging to Concilio Cubano, was subjected to repeated harassment in recent years. 5/ On 18 February he was detained and taken to the Technical Investigation Department in Havana, where he was held until 24 February. Two days later, he was again arrested after having made statements by telephone to persons in the United States of America, condemning the incident in which two small planes were shot down. 6/ He was charged with "association with criminal intent", inter alia, and released on bail on 8 April. A few days later, agents of the State Security Department threatened him with a long prison term unless he agreed to leave the country with his family. On 4 July they left for Spain, but before doing so they were warned not to return;

(b) Rafael Solano, 7/ 44 years old, director of the independent press agency Habana Press, was arrested several times in 1995 and warned to stop his journalistic activities and not to send information abroad. On 24 February 1996 he was arrested and held for several hours in police custody. On 27 February he was arrested again and imprisoned in the Villa Marista police station until 8 April on the charge of "association with criminal intent". Throughout the entire time he was held in a windowless cell under constant artificial light, which allegedly disoriented his sense of time. He was not allowed to meet with his attorney, although he was permitted a weekly visit by members of his family, always in the presence of guards. He was conditionally released on 8 April. Because he had been pressured to leave the country, he decided to accept an invitation to travel for a limited time to Spain. The authorities, however, stamped on his passport that no re-entry would be permitted and warned him that he should not attempt to return;

(c) Roxana Valdivia, head of the independent press agency Patria, in Ciego de Ávila, was arrested several times between October 1995 and March 1996, threatened with prosecution if she continued her activities and forbidden to travel outside of Ciego de Ávila. In addition, she was allegedly warned to leave the country, and pressure was put on her for several months to do so. She left for the United States in June 1996.

12. There were also cases of persons sentenced to restriction of liberty or internal banishment, or persons simply forced to return to their place of origin. 8/ For instance, María Antonia Escobedo Yaser, a member of the Concilio Cubano coordination council, was arrested on 16 February 1996, taken to the Altahabana police station in Havana and forced to return to her place of residence in Santiago de Cuba. Alfrans Ossiel Gómez Alemán of the Christian Democratic Party of Cuba, was allegedly kept in detention from 6 to 9 January 1996 in the Versalles State Security Department in Matanzas province, where he received an official warning for having engaged in unlawful association. He is also said to have been detained from 12 to 15 February and from 24 to 26 February. On the latter occasion, which took place in Havana, the State Security Department allegedly warned him that if he ever entered the capital again he would be prosecuted for disobeying the authorities, and he was subsequently banished to his home province. He was once again put under arrest from 16 to 18 March, this time in the town of Colón, Matanzas, when, together with other opposition group representatives, he submitted a letter to the State Council regarding reprisals against Concilio Cubano. He was again detained, from 23 to 27 April 1996, for having been found doing work for Concilio Cubano.

13. Beyond the wave of temporary arrests and harassment that occurred in February, directly attributable to the Concilio Cubano meeting, arrests and harassment continued and showed no sign of abating in comparison with previous years. The following are some of the cases that came to the Special Rapporteur's attention:

(a) Aída Rosa Jiménez and Marta Parga García were subjected on 20 March 1996 to questioning over a period of 12 hours in the State Security Department in Havana. They were subsequently tried on charges of "association with criminal intent" and "demonstrations against the persons of Fidel Castro and Raúl Castro and against heroes and martyrs" in connection with their activities in the Madres Cubanas por la Solidaridad movement. Previously, on 7 March, they had been detained in Cienfuegos province for 24 hours, after which they had been banished from that province and deprived of their identity papers for 13 days;

(b) Néstor Rodríguez Lobaina and Radamés García de la Vega, President and Vice-President, respectively, of the group Jóvenes por la Democracia, were arrested on 6 June 1996 in Havana on charges of "contempt" and "resistance" in connection with their efforts to organize a movement for university reform in the capital. In the days that followed they were tried, with no lawyer present, and sentenced to 12 and 6 months' restriction of liberty respectively and five years of banishment to their home towns, in eastern Cuba. They were released and remained in Havana awaiting a final decision on appeal. Nevertheless, on 25 June they were once again arrested and taken to a police station in El Vedado, where they were allegedly beaten; the following day they were brought before a municipal court which ordered their immediate transfer to Santiago de Cuba, even though the case had not yet been resolved on appeal. Subsequently, members of the State Security Department of that city accompanied them to their respective domiciles: Néstor Rodríguez to Baracoa in Guantánamo province and Radamés García to Palma Soriano in Santiago de Cuba province;

(c) Carlos Lores Martínez, a professor at the Faculty of Electronics at the University of Pinar del Río, was arrested by State Security police on 3 May 1996. On the same occasion, his brother, Silvio Lores Martínez, an engineer, was also arrested but released without charges on 12 July. At the time this report was prepared, Carlos Lores was still being held in the State Security Department of Pinar del Río on the charge of "dissemination of enemy propaganda", and was in poor health. Both brothers were officially expelled from their university posts;

(d) Osmel Lugo Gutiérrez, Vice-President of the Partido Democrático 30 de Noviembre, and Maritza Lugo were summoned on 15 May 1996 to the immigration offices in Havana, where they were allegedly offered the opportunity to leave the country, which they rejected. They were subsequently arrested, Osmel on 22 May and Maritza on 3 June. While she was released two days later, he continued to be held in the Technical Department of Investigation, charged with "association with criminal intent" for having exhorted the inhabitants of a Havana neighbourhood to resist the forced evictions from their homes ordered by the authorities. Maritza Lugo, Grisel Galera and Marco Torres, also members of the Partido Democrático 30 de Noviembre, are said to have been indicted for doing the same.

14. Around 13 July 1996, there were a series of arrests and house searches of members of different groups in the city and province Havana, probably in connection with the second anniversary of the sinking of the tugboat 13 de Marzo, in which 37 persons had died. Among those arrested were: Gladys Linares Blanco, deputy delegate of Concilio Cubano; Nancy Sotolongo of the Movimiento 13 de Julio and Joaquín Torres of Habana Press; Marta Parga and Aída Rosa Jiménez, from whom documents as well as the files of their movement, Madres Cubanas por la Solidaridad, were also seized; and Ana Maria Agramonte of Agenda Nacionalista, who is said to have been detained several hours in the tenth police precinct headquarters, on Acosta and Diez de Octubre. All these persons were taken to different police stations, questioned and released hours later. Secundino Coste Valdés, a member of the Movimiento Panchito Gómez Toro and the Alianza Democrática Popular, two groups belonging to Concilio Cubano, was detained on 30 July 1996 following a search of his house by State Security agents and was transferred to the Villa Marista detention centre, where he remained two weeks later.

15. Other individuals arrested and interrogated in Havana at the beginning of August were Miguel Palenque Lodeiro and Jorge Aguilar Lavandera from the group Solidaridad y Paz, who were taken to the Villa Marista and Acosta police stations, respectively; Irene Almira, Néstor Dopico, Carlos Raúl Jiménez Carrero, Roberto Hernández Alvarez and Mercedes Saborné Lamas, who were taken to the police station on Lucu and Villanueva in the Luyanó district, and José González Bridón, part of the same group, who was taken to the eleventh police precinct headquarters.

16. Another group that continues to be the target of repressive measures consists of journalists who are trying to work outside the official press 9/ and have set up various press agencies that maintain high professional standards but have no political affiliation, an activity they do not consider to be against the law. In addition to the few cases mentioned earlier, 10/ the Special

Rapporteur received information on harassment directed against the following persons in 1996: Julio Martínez of Habana Press, arrested on 14 January; Luís Solar Hernández of the Independent Press Office of Cuba (BPIC), arrested in Ciego de Avila on 19 January; Raúl Rivero of CubaPress, arrested on 14 February; Bernardo Fuentes Camblor of BPIC, arrested on 15 January, 6 March and 12 August in Camaguëy; María de los Angeles González and Omar Rodríguez of BPIC, arrested on 13 March; Olance Nogueras of BPIC, arrested on 23 April in Cienfuegos; Yndamiro Restano of BPIC, arrested on 26 April; Lázaro Lazo of BPIC, arrested on 24 May and taken in for further questioning on 24 June; Joaquín Torres Alvarez of Habana Press, threatened and pressured to leave the country on 31 May and arrested on 12 July; José Rivero García of CubaPress, who was threatened and had his professional equipment confiscated on 9 June; Norma Brito of BPIC, taken in for questioning on 26 June; Orlando Bordón Galvez of CubaPress, questioned on 13 July; Mercedes Moreno of BPIC, questioned on 15 July; Néstor Baguer of the Independent Press Agency (APIC), questioned on 15 and 16 July; Juan Antonio Sánchez of CubaPress, arrested on 14 February and 30 July; Pedro Arguëlles Morán of Patria, taken in for questioning on 1 August; Ramón Alberto Cruz Lima of Patria, taken in for questioning on 1 and 7 August; Magaly Pino García and Jorge Enrique Rives of Patria, arrested in Camagüey on 12 August; and Jorge Olivera Castillo of Habana Press, taken in for questioning on 14 August.

17. The information received recently by the Special Rapporteur hardly suggests any improvement in the treatment of detainees in prisons and detention centres, which he described in earlier reports. 11/ Those reports give an account of the overcrowding, terrible sanitary conditions, inadequate and substandard food, limited medical care, beatings, restrictions on family visits, the problems of having common criminals share living quarters with political prisoners, and the jailing of many political prisoners far from their home towns, which makes contact with their families extremely difficult.

18. Among the political prisoners who are reported to have serious health problems for which they are not receiving proper medical treatment are the following: Eduardo Rubén Hoyos Ruiz, arrested in 1990 and sentenced to a total of eight years for the crimes of contempt and dissemination of enemy propaganda is thought to be serving his sentence in La Esperanza correctional centre in the town of Ranchuelo in Villa Clara province; he suffers from diabetes and is almost totally blind. Pedro López de Miranda, sentenced in 1992 to six years' imprisonment for disseminating enemy propaganda, is said to be suffering from chronic osteochondritis in the Kilo 7 prison in Camagüey.
Victor Rafael Durán Hernández, sentenced in 1993 to six years' imprisonment for disseminating enemy propaganda, is said to be suffering from tuberculosis in the Kilo 8 prison in Camagüey. Also ill with tuberculosis in the Guamajal prison in Villa Clara are José Rodríguez Herrada, sentenced to ten years' imprisonment in 1991 for leaving the country illegally and piracy, and
Eddy Emilio González Mateo, sentenced to eight years' deprivation of liberty in 1992 for contempt and dissemination of enemy propaganda. Eduardo Gómez Sánchez, sentenced in 1994 to 20 years' imprisonment for leaving the country illegally and piracy, is said to be suffering from a malignant tumour in the Kilo 8 prison in Camagüey. Ernestina González Sánchez, sentenced in 1993 to seven years' imprisonment for disseminating enemy propaganda and for rebellion, is said to be suffering from coronary insufficiency among other things, in the Aguadores

prison in Santiago de Cuba. About 35 prisoners are thought to have tuberculosis in the correctional centre known as La Disciplinaria, located at kilometre 7.5 in Alvaisa, Camagüey province.

19. As in previous years, groups within the country provided the Special Rapporteur with a list of persons serving sentences for political offences; the list was dated July 1996 and contained 1,173 names. While the number of people prosecuted for such offences seems to have declined over the past year, there has not been a similar trend with respect to any other forms of harassment, as the situation described in this chapter of the report shows.

20. The Special Rapporteur also continued to receive information on cases in which people had lost their jobs for having expressed in some way their disagreement with the system. The following are examples of such cases:

(a) In April 1996, by a resolution of the Ministry of Higher Education of Cuba, Alberto Cruz Lima was dismissed from his post as assistant dean of the Faculty of Accounting of the University of Ciego de Avila after he and his wife tried to emigrate legally. The resolution in question stated that he was being dismissed because he no longer met the requirement of exemplary commitment to the revolution;

(b) On 11 April 1995, the qualifications board of the Ignacio Agramonte lower secondary school dismissed Ángel Dávalo Machado from his post as a physics teacher for not participating in the activities of the escuela al campo (a period of mandatory service by students in rural areas) or in political activities, and for not paying dues to the official union.

21. The Special Rapporteur received additional information concerning the case of the university professors Eduardo Raúl García Nieto, Miguel Ángel Padilla Caneiro, Rafael Nicomedes Vigoa Díaz and José Manuel Gil Barrios, who were barred from teaching in late 1994 after they advocated a shift to democracy in Cuba, 12/ even though they were not officially expelled from their institution. One year later, after filing a number of complaints, including one with the Office of the Attorney-General of the Republic, they received a communication from the dean of their department informing them that they had been dismissed for "unexcused absences from work". The only legal recourse against this decision is the staff council of the institution itself, which obviously does not meet the requirement of independence.

22. The Special Rapporteur regrets that he continues to receive reports of dismissals of teaching staff, even though the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO) has deemed that this practice contravenes ILO Convention No. 111 concerning discrimination in respect of employment and occupation. 13/ As a follow-up to its consideration of the case of the 14 university professors expelled from their departments in 1992, the Committee of Experts notes in its latest report that the kind of discriminatory treatment suffered by the teachers, based on the expression of political opinion, is contrary to the Convention. 14/

23. In its general study on equality in employment and occupation, the Committee of Experts notes that:

"In protecting individuals against discrimination in employment and occupation on the basis of political opinion, the Convention implies that this protection shall be afforded to them in respect of activities expressing or demonstrating opposition to the established political principles, or simply a different opinion. The protection of political opinions only applies to opinions which are either expressed or demonstrated, and does not apply if violent methods are used to express or demonstrate these opinions ...

"The general obligation to conform to an established ideology or to sign an oath of political allegiance would be considered discriminatory; however cases in which the ground of political opinion is taken into consideration as a prerequisite for a given job should be objectively examined, under judicial scrutiny, to determine if this prerequisite is really justified by the inherent requirements of the job". 15/

III. RIGHT TO LEAVE AND RETURN TO THE COUNTRY

24. In this area, too, the situation described by the Special Rapporteur in his previous report has continued. 16/ The authorities maintained their policy of forcing dissidents out of the country by threatening them with prosecution or releasing them on the condition that they leave the country immediately. The cases of Eugenio Rodríguez Chaple, Rafael Solano and Roxana Valdivia, which were mentioned earlier, exemplify the first of these practices. The second practice is exemplified by the case of Luis Grave de Peralta Morell, who was arrested in February 1992 in connection with the establishment of a political group in Santiago de Cuba and sentenced to 13 years' imprisonment for rebellion; 17/ he was released in February 1996. Also released at approximately the same time was Carmen Julia Arias Iglesias, who had been sentenced to nine years' imprisonment in August 1994 for the crime of divulging secrets concerning State security in her work related to the compilation of complaints of human rights violations.

25. The Special Rapporteur also received information on the following cases in which people were denied permission to leave the country to join relatives who had left Cuba previously by legal means and had decided not to return:

(a) Sandra María Gato Menéndez and her daughter Chanel Tabares Gato were denied permission to leave the country to join Mario Iván Tabares, their husband and father respectively, a former member of the national tennis team who had been granted political asylum in the United States of America in March 1995. His wife and daughter had been issued United States entry visas in September 1995. In November 1995 Sandra María Gato was summoned to the Immigration Office, where she was told that her departure would be delayed for a period of three years. In March 1996, she was summoned again and told that her trip would be delayed indefinitely because she was the wife of a "traitor to the nation";

(b) Loreto Mérida García Navarro, Dianela María Morales García, Carlos Cano Orta and Daymara Cano Morales, relatives of Pablo Morales, one of the four pilots of the aircraft shot down by the Cuban Air Force on 24 February 1996, were denied permission to leave the country to join the rest of their family in the United States even though they had the proper visas. Moreover, 11-year-old Daymara Cano was said to be in very delicate health because her family could not afford to obtain the necessary medical care for her in Cuba.

IV. VIOLATIONS OF THE RIGHT TO LIFE

26. In the context of violations of the right to life, the Special Rapporteur would like to refer to the case of the sinking of the tugboat 13 de Marzo, which took place on 13 July 1994 and was discussed in previous reports. 18/ The Special Rapporteur is seriously concerned about the fact that an event of this magnitude, in which 37 people died, has not been investigated. Moreover, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated, in his report to the Commission on Human Rights at its fifty-second session, that he had transmitted allegations concerning that case to the Government of Cuba on 12 June 1995 but had not yet received a reply by the end of the year. In the same report, the Special Rapporteur said that those allegations must be properly investigated, the perpetrators brought to justice and the victims' families compensated. 19/

27. Another instance in which the Cuban authorities violated the right to life occurred on 24 February 1996, when Cuban Air Force pilots shot down two civil aircraft, registered in the United States, which were on a mission for Brothers to the Rescue, a volunteer organization based in Miami. The four crew members, all of whom died in that incident, were Armando Alejandre, Carlos Costa, Pablo Morales and Mario de la Peña. In recent years, Brothers to the Rescue has undertaken to fly over the waters of the Straits of Florida to search for persons leaving Cuban territory in precarious means of transport for the United States coast, in many cases helping to save their lives.

28. Following the incident, the United Nations Security Council, along with the Governments of Cuba and the United States of America, asked the International Civil Aviation Organization (ICAO) to investigate the incident. After the investigation was completed, the Council of ICAO considered the report thereof in June 1996. That report 20/ concluded that the authorities in Cuba had notified the authorities in the United States of multiple violations of their airspace since May 1994. In at least one case (13 July 1995), the pilot had released leaflets over Havana. The United States authorities had issued public statements advising of the potential consequences of unauthorized entry into Cuban airspace and had initiated legal actions against the above-mentioned pilot.

29. According to the authorities in Cuba, two light aircraft violated Cuban territorial airspace on 9 and 13 January 1996, and released leaflets which fell on Cuban territory. According to the pilot of one of the aircraft, half a million leaflets were released on 13 January 1996; on both occasions they were released outside the 12-mile Cuban territorial limit and the wind carried them

to Havana. Following that incident, the ICAO report states, the Commander of the Anti-Aircraft Defence of the Air Force of Cuba was instructed that violations of Cuban territorial airspace should no longer be tolerated, and was authorized, if such a situation arose again, to decide personally on military interception and shooting down, if so required.

30. The ICAO report notes that there were significant differences between the data provided by the Cuban and United States authorities concerning the position of the aircraft at the time they were shot down on 24 February. It therefore considers that the data provided by the cruise ship Majesty of the Seas, which was in the vicinity, are more reliable; according to those data, the shoot-downs took place outside Cuban territorial airspace. The report also states that means other than interception, such as radio communication, had been available to Cuba but had not been utilized, and that this conflicts with the ICAO principle that interception of civil aircraft should be undertaken only as a last resort. Nor did the Cuban Air Force make any attempt to direct the aircraft beyond the boundaries of national airspace, guide them away from a prohibited, restricted or danger area or instruct them to effect a landing. The rule of customary international law that States must refrain from resorting to the use of weapons against civil aircraft in flight, as codified in article 3 bis of the Convention on International Civil Aviation, and the ICAO provisions concerning interception of civil aircraft, apply irrespective of whether or not such an aircraft is within the territorial airspace of that State.

31. After considering the report, the Council of ICAO adopted, on 27 June 1996, a resolution 21/ reaffirming the principle that States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered. It also reaffirmed the principle that each Contracting State should take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State for any purpose inconsistent with the aims of the Convention on International Civil Aviation. Lastly, the Council reaffirmed its condemnation of the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity, the rules of customary international law as codified in article 3 bis of the Convention and other standards annexed thereto. By its resolution 1067 (1996), the United Nations Security Council endorsed the conclusions of the report and the resolution adopted by the Council of ICAO.

32. The Special Rapporteur considers that the shooting down of these aircraft was a premeditated act and that it constituted a violation of the right to life of four people. From a political standpoint, the manner in which the events took place, particularly the fact that approximately six minutes elapsed between the shooting down of one aircraft and that of the other, irrefutably indicates that the act did not represent the reflex of some confused pilots, but that there had been enough time for them to receive precise orders to act as they did. The high command of the Cuban Army was aware that shooting down the aircraft would add a new obstacle to the already difficult relations between Cuba and the United States. One can thus legitimately ask who in the Cuban Government has an interest in causing incidents that create such obstacles, and why. At the same time, one can also legitimately ask why the United States

authorities did not take effective measures to halt additional flights by these aircraft which could be expected to have tragic consequences. One possible reason is the existence of groups in Miami whose relevance depends on the continued existence of confrontational policy between the two countries.

V. ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

33. The Special Rapporteur, in previous reports, has referred to economic measures adopted by the Government to bring the country out of its serious ongoing economic crisis and in some way mitigate its impact. The severity of the crisis, however, continues to have a serious effect on the enjoyment of economic, social and cultural rights, with such sectors as health and housing being particularly hard hit. For example, the severe shortage of medicine, which external humanitarian assistance is only partly succeeding in alleviating, and the lack of equipment at a great majority of the country's hospitals create serious concern for the average citizen, who, in addition, feels discriminated against in seeing that there are hospitals reserved for foreigners bringing in foreign currency that offer services to which the average citizen does not have access. This is all the more regrettable as until a few years ago a high level of services was available to the average citizen.

34. The level and quality of employment have also declined considerably, as a result of the closing or low-level operation of obsolete enterprises, accompanied by extremely low wages in virtually every sector of the economy, which forces many workers, including those who are highly qualified, to quit their regular jobs and/or to seek their livelihood in the informal sector or in authorized self-employment, even where such jobs bear no relationship to their qualifications.

35. One of the measures taken by the Government to mitigate the employment crisis has been to open up the economy to foreign investment, a measure which was extended with the adoption of a new Foreign Investment Act in September 1995. The non-governmental sectors with which the Special Rapporteur had an opportunity to speak expressed their concern at the employment situation of workers in enterprises funded with foreign capital, in particular at the lack of any kind of collective bargaining and the arbitrariness of a situation in which hiring, payment of wages, termination of contracts and other labour issues were not dealt with directly between the enterprise and the employee, but through an employment authority designated by the Government. The same ideologically motivated discriminatory standards used in other spheres could also be applied in the context of these enterprises, thereby ensuring Government control over the workers.

36. In addition, wages are not paid directly to the workers, but to the Government employment authority which receives them in hard currency and then pays the worker in national currency. There is a considerable difference between the wages paid by the enterprise and those actually paid to the worker by the employment authority, which allows the State to extract substantial profits to the detriment of the worker's potential earnings. The Act also provides that where a mixed enterprise or enterprise funded solely with foreign capital considers that a particular worker does not meet its employment needs it

may ask the employment authority to replace him or her by another worker, without there being any legal protection.

37. The report issued by the International Confederation of Free Trade Unions (ICFTU) and the Inter-American Regional Organization of Workers (ORIT) after a visit to Cuba in February 1996 stated that representatives of those two workers' organizations had discussed their concerns in this regard with the authorities, to the effect that such a system lent itself to the exploitation of the worker. The authorities had reportedly explained that the employment authority, in its negotiations with foreign companies, guaranteed that Cuban legislation would be fully respected, and that trade union officials took part in the negotiations. The members of the mission, nonetheless, maintained in their report that there was indeed a risk of exploitation and that trade union officials lacked any means to combat it.

38. The Government, in its negotiations with foreign companies, must ensure that workers' rights, many of which are set forth in ILO conventions to which Cuba is party, are safeguarded. To allow exploitative situations to spread openly violates the doctrine underlying the current political system, which those in power defend so zealously.

VI. CONCLUSIONS AND RECOMMENDATIONS

39. The action waged against dissident groups in 1996 has consisted largely of intensive harassment by members of the State security forces. Threats, intimidating visits to the homes of political activists and the imposition of penalties for alleged economic crimes which are in fact political activities are the methods used by the authorities in their effort to break up any form of opposition. Nevertheless, according to information provided to the Special Rapporteur, the number of trials and sentences has been smaller and the length of sentences shorter than in previous years. A number of reasons can be cited for this change, but one of them is surely the focusing of attention on Cuba by various international bodies and the critical dialogue in which a number of countries and regional groups, especially Europe and Latin America, have engaged Cuba. Whatever the reason, the work done by individuals and groups involved in collecting and disseminating information on human rights violations in Cuba continues to be of vital importance. Of these, those operating in the country deserve not only recognition but also all the protection the international community can provide. To be a dissident in Cuba is as difficult and risky today as it has been at any time in recent years.

40. The terms of the Helms-Burton Act (officially, the Cuban Liberty and Democratic Solidarity Act) and the Torricelli Act, which stipulate specific conditions and time-frames for the lifting of the embargo, also stipulated that the United States of America shall have the right to be the outside party that determines the rules for converting the current totalitarian system into a different, democratic one. This inspires doubt rather than confidence about the future and may cause some dissidents to feel that their own criteria are irrelevant and that Cuba's future will in any case be decided without consulting them. The direct result of this situation could be a decline in the trend towards overt political activity and the risk it implies. In any event, it is a

fact that a great many people identified with dissident groups have left the country or are preparing to do so, a development that is partly due to the Government's policy of coercing dissidents to leave the country.

41. Until early 1996 it was possible, under United States Government policy, to channel funds and technical advice to different intellectual, humanitarian and religious groups. In an effort to dispel criticism that this system was being supported by certain groups of exiles, the United States Government called this assistance a covert means of undermining the Cuban system.

42. Cuba's economic free-fall, which was accelerated by the break-up of the Soviet Union and the disappearance of the socialist bloc, seems to have stopped. It is remarkable for a country that suddenly lost one third of its national product to experience an economic decline of this magnitude and survive politically. One conclusion that can be drawn is that the current regime enjoys greater credibility and can draw on greater stores of loyalty among broad segments of the population than many observers thought. Another contributing factor has been the system's flexibility, as demonstrated by the economic reforms introduced in the 1990s, perhaps the most significant of which involved legalizing the possession of dollars and self-employment. In agriculture, too, there has been some experimentation with cooperative models and the distribution and sales of goods through private channels. Nevertheless, huge obstacles remain which any Government will have to address in a society that has been guided for so long by criteria other than economic ones. The new phase of economic transition will have, at least in the short and medium terms, highly problematic social consequences and costs that will be difficult for the Government to cope with. Perhaps the most important of these is the high level of unemployment, an ill unknown to several generations of Cubans.

43. The flexibility displayed in the economic sphere has not been matched in the political arena. It seems clear that in the current political environment, the Cuban Government has taken a frankly negative, not to say hostile, attitude towards the idea of introducing a pluralistic political system in Cuba. Given the force of circumstance, the changes already introduced in the economic and social sectors will compel the authorities to turn to new forms of communication and consult the people. The form this will take and the degree to which it is successful will have a major impact on the country's future.

44. The continuation of human rights violations during 1995 obliges the Special Rapporteur to reiterate to the Government of Cuba, essentially the same recommendations as those made in previous years, and resolution 1996/69 of the Commission on Human Rights calls upon the Government of Cuba to implement them:

(a) Cease persecuting and punishing citizens for reasons relating to the exercise of the freedom of peaceful expression and association;

(b) Take immediate steps to release unconditionally all those persons serving sentences for offences against State security and other related offences and for trying to leave the country unlawfully;

(c) Permit legalization of independent groups, especially those seeking to carry out activities in the political, trade union, professional or human rights

field, and allow them to act within the law, but without undue interference on the part of the authorities;

(d) Ratify the principle human rights instruments to which Cuba is not yet a party, in particular, the International Covenant on Civil and Political Rights and its two Optional Protocols (the first on individual communications from individuals and the second intended to abolish the death penalty) and the International Covenant on Economic, Social and Cultural Rights;

(e) Delete from penal legislation types of offences by virtue of which citizens may be tried for exercising their right to freedom of expression and association, such as enemy propaganda, unlawful association, possession of illegal printed matter, and restrict the application of other offences which, while not specifically so designed, may, in practice, be used in such a way as to have the same effect, as, for example, the offence of rebellion;

(f) Review in depth the legal provisions relating to the concept of "dangerousness" and the relevant security measures with a view to eliminating all those aspects liable to infringe the rights and freedoms of individuals;

(g) Repeal all those legal provisions which imply discrimination between citizens on political grounds, in particular in the employment and education sectors, and redress as far as possible abuses committed in this area in the past, for example, by reinstating in their former posts persons who have been dismissed;

(h) Repeal the legal provisions which bar Cuban citizens from exercising their right to enter and leave the country freely without requiring prior administrative authorization. This also implies putting an end to de facto discrimination against persons who, having unsuccessfully tried to settle abroad, have been repatriated. Persons of Cuban origin residing abroad, in particular those who are Cuban nationals, should be able to enjoy the same right once the minimal administrative requirements have been met;

(i) Reform trial law so as to ensure that the guarantees of due process, including the independence of the judiciary, are duly safeguarded, in accordance with the provisions of the relevant international instruments. This reform must in particular include measures to facilitate free and effective access to legal assistance for all persons put on trial, including those charged with offences against State security. Such assistance should be provided by lawyers able to practise their profession with complete independence. Equality between the prosecution and the defence in trials of this nature must also be guaranteed;

(j) The competent national authorities should investigate thoroughly all incidents involving violations of the right to life with a view to punishing those responsible and providing compensation to the relatives of the victims;

(k) Ensure greater transparency and guarantees in the prison system, so as to prevent, to the extent possible, excessive violence and physical and psychological suffering from being inflicted on prisoners. In this connection, it would be a major achievement to renew the agreement with the International

Committee of the Red Cross and to allow non-governmental humanitarian organizations access to prisons;

(l) Allow international non-governmental human rights organizations to enter the country more frequently so that they can evaluate the human rights situation and offer their competence and cooperation with a view to securing improvements.

45. The international community should continue providing all possible support for the establishment of a process of peaceful political transition in Cuba to accompany the ongoing economic reforms. It should also ensure that adequate humanitarian assistance is provided to the Cuban population in need, in particular vulnerable groups such as children, youth, the elderly, women, disabled persons and unemployed persons. It is also necessary to facilitate multi- and bilateral technical and financial cooperation with Cuba which can enable its Government and people to continue on the path of the economic reforms in progress and to undertake, on a consensual basis, the political reforms which are urgently called for by the current situation, in particular with respect to human rights.

46. In accordance with the invitation extended by the Commission on Human Rights in its resolution 1995/66, the Government should consider the possibility of requesting the establishment of a programme of advisory services and technical assistance. The objective of the programme should be to facilitate the dissemination of information on, and the education of Cubans with respect to, human rights; to assist international experts in carrying out technical studies so as to bring domestic legislation more closely in line with the human rights requirements of universally accepted international standards; and to establish national institutions for the promotion and protection of human rights.

Notes

1/ See in particular E/CN.4/1996/60, paras. 10-15.

2/ The Special Rapporteur mentioned these incidents in his preceding report (E/CN.4/1996/60, para. 24).

3/ Article 143 of the Criminal Code.

4/ Article 144 of the Criminal Code.

5/ Acts of harassment against this person were reported in the Special Rapporteur's report of 11 January 1995 (E/CN.4/1995/52, para. 15 (f)).

6/ See paras. 27-32 below.

7/ The previous report of the Special Rapporteur also referred to this person (E/CN.4/1996/60, para. 31).

8/ As regards the penalty of restriction of liberty, article 34 of the Criminal Code establishes that "it is a lesser alternative to any sentence of deprivation of liberty that does not exceed three years, and it is applicable when, given the nature and circumstances of the offence and the individual characteristics of the person being sentenced, there are reasonable grounds for believing that the aim of the penalty can be achieved without imprisonment". While serving the sentence, the person: "(a) may not change residence without the authorization of the court; (b) shall not be entitled to promotions or salary increases; (c) shall be obliged to appear before the court as often as summoned to explain his conduct while serving the sentence; (d) must display a responsible attitude towards his work, strict compliance with the law and observance of the standards of socialist co-existence ... The penalty of restriction of liberty shall be carried out under the supervision and vigilance of the mass organizations and social organizations of the sentenced person's place of residence".

The penalty of internal banishment, according to article 42 of the Criminal Code, is a prohibition against residing in a given place or an obligation to remain in a given place, and can be imposed in all cases where the presence of the person sentenced poses a threat to society.

9/ See E/CN.4/1996/60, paras. 29-31.

10/ See paras. 11 (b) and (c) above.

11/ See in particular E/CN.4/1996/60, paras. 47-54.

12/ Ibid., para. 26 (a)

13/ Ibid., para. 27.

14/ International Labour Conference, Eighty-third session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 1996, p. 281.

15/ International Labour Conference, Eighty-third session, 1996, Equality in employment and occupation, Report of the Committee of Experts on the Application of Conventions and Recommendations, paras, 45 and 47.

16/ See E/CN.4/1996/60, paras. 42-46.

17/ See E/CN.4/1994/51, para. 27 (b).

18/ E/CN.4/1996/60, para. 38.

19/ E/CN.4/1996/4, paras. 158 (c) and 160.

20/ See S/1996/509, annex.

21/ Resolution adopted by the Council of the International Civil Aviation Organization at the 20th meeting of its one hundred and forty-eighth session.